

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE: SITAGLIPTIN PHOSPHATE ('708  
& '921) PATENT LITIGATION

MDL No. 19-2902-RGA

MERCK SHARP & DOHME CORP.,

*Plaintiff,*

v.

APOTEX INC. and APOTEX CORP.,

*Defendants.*

C.A. No. 20-749-RGA

**STIPULATION AND [PROPOSED] ORDER REGARDING CLAIM CONSTRUCTION**

Plaintiff Merck Sharp & Dohme Corp. (“Merck”) and Defendants Apotex Inc. and Apotex Corp. (“Apotex”) (collectively, “the Parties”) hereby submit the following stipulation regarding claim construction in Civil Action No. 20-749-RGA concerning U.S. Patent No. 7,468,459 (the “‘459 patent”):

Whereas the Parties exchanged lists of claim terms for construction on April 2, 2021 pursuant to the Parties’ Stipulation (D.I. 58, 72);

Whereas neither Merck nor Apotex identified any claim terms as requiring construction by the Court for the ‘459 patent;

Whereas the Parties conferred regarding the April 9, 2021 submission deadline for the Joint Claim Construction Chart (*see* D.I. 58, 72) and confirmed their agreement that no terms of the ‘459 patent required construction by the Court at this time, and therefore, did not submit a Joint Claim Construction Chart to the Court;

NOW THEREFORE it is hereby stipulated by and among the Parties, through their respective counsel, and subject to approval of the Court, as follows:

The parties agree that no terms of the '459 patent require a *Markman* construction by the Court at this time, *i.e.*, the Parties are not proposing competing constructions for any terms. As such, the Parties respectfully request the Court to remove from the case schedule in Civil Action No. 20-749-RGA all future claim construction deadlines and hearings with respect to the '459 patent, and in particular, the following:

- Merck's Opening *Markman* Brief (April 23, 2021)
- Apotex's Responsive *Markman* Brief (May 7, 2021)
- Merck's Reply *Markman* Brief (May 21, 2021)
- Apotex's Sur-reply *Markman* Brief (June 4, 2021)

Nothing in this stipulation shall affect any other claim construction deadlines that may remain in the MDL Action (C.A. 19-md-2902-RGA) or the related actions.

Dated: April 13, 2021

MCCARTER & ENGLISH, LLP

/s/ Alexandra M. Joyce  
Michael P. Kelly (#2295)  
Daniel M. Silver (#4758)  
Alexandra M. Joyce (#6423)  
Renaissance Centre  
405 N. King Street, 8th Floor  
Wilmington, DE 19801  
T: (302) 984-6300  
mkelly@mccarter.com  
dsilver@mccarter.com  
ajoyce@mccarter.com

PHILLIPS, MCLAUGHLIN & HALL, P.A.

/s/ David A. Bilson  
John C. Phillips, Jr.  
David A. Bilson  
1200 North Broom Street  
Wilmington, DE 19806  
(302) 655-4200  
jcp@pmhdelaw.com  
dab@pmhdelaw.com

OF COUNSEL:

Bruce R. Genderson  
Jessamyn S. Berniker  
Stanley E. Fisher  
Elise M. Baumgarten  
Alexander S. Zolan  
Shaun P. Mahaffy  
Anthony H. Sheh  
Jingyuan Luo  
Jihad Komis  
Sarah Uribe  
Jihad Komis\*  
Jeffrey G. Ho  
WILLIAMS & CONNOLLY LLP  
725 Twelfth Street, N.W.  
Washington, DC 20005  
T: (202) 434-5000  
F: (202) 434-5029  
bgenderson@wc.com  
jberniker@wc.com  
sfisher@wc.com  
azolan@wc.com  
ebaumgarten.com  
smahaffy@wc.com  
asheh@wc.com  
jluo@wc.com  
suribe@wc.com  
jkomis@wc.com  
jho@wc.com

*\*Admitted only in Michigan. Practice  
supervised by D.C. Bar members pursuant  
to D.C. Court of Appeals Rule 49(c)(8).*

*Attorneys for Plaintiff  
Merck Sharp & Dohme Corp.*

OF COUNSEL:

Joseph M. Janusz  
KATTEN MUCHIN ROSENMAN LLP  
550 South Tryon Street  
Suite 2900  
Charlotte, NC 28208-4213  
(704) 444-2000  
joe.janusz@kattenlaw.com

Guylaine Hache  
KATTEN MUCHIN ROSENMAN LLP  
525 W. Monroe Street  
Chicago, IL 60661  
(312) 902-5619  
guylaine.hache@kattenlaw.com

*Attorneys for Defendants  
Apotex Inc. and Apotex Corp.*

SO ORDERED this 13 day of April, 2021.

/s/ Richard G. Andrews  
United States District Judge